IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 7015 of 2005(I)

OS.105/1998 of MUNI-MAGI.COURT,PATTAMBI
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PETITIONERS:
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1. IBRAHIM HAJI, SON OF LATE CHIETTIYARTHODI HASSAN HAJI, VALLAPPUZHA AMSOM AND DESOM, OTTAPALM TALUK.

2. KUNHIMOHAMED, SON OF LATE CHIETTIYARTHODI HASSAN HAJI, VALLAPPUZHA AMSOM AND DESOM, OTTAPALAM TALUK.

3. KHAKER, SON OF LATE CHIETTIYARTHODI HASSAN HAJI, VALLAPPLUZHA AMSOM AND DESOM, OTTAPALAM TALUK.

4. HAAMZA, SON OF LATE CHIETTIYARTHODI HASSAN HAJI, VALLAPPLUZHA AMSOM AND DESOM, OTTAPALAM TALUK.

BY ADV. SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SMT.SANJANA R.NAIR
SRI.JAYKAR.K.S.
SRI.RAHUL VARMA
SRI.V.S.ROBIN

RESPONDENTS:
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1. PATHUMMA, W/O. KALLINGAL LATE AHAMMED RESIDING AT VALLAPPUZHA AMSOM AND DESOM, OTTAPALAM TALUK.

2. MOHAMMEDKUTTY, S/O. PALAKURISSI PAPPANKATTIL LATE ALI, RESIDING AT VALLAPPUZHA AMSOM AND DESOM, OTTAPALAM TALUK.

3. ABOOBACKER ALIAS ABU, SON OF
NARAYAPARAMBIL SAIDALI, VALLAPPUZHA AMSOM
AND DESOM, OTTAPALAM TALUK.

4. ASSAINAR ALIAS ASAINU,
SON OF PARAYARKUNDIL LATE ALAVI HAJI,
VALLAPPUZHA AMSOM AND DESOM, OTTAPALAM TALUK.

5. MOHAMMEDKUTTY, SON OF PALAKURUSSI
KANDANATH LATE KUNHAMMED, VALLAPUZHA AMSOM
CHOORAKODE DESOM, OTTAPALAM TALUK.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.HARISH R. MENON
SRI.SANTHEEP ANKARATH
SRI.P.P.SURESHKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 7015 OF 2005

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT DATED 11.05.98 IN OS NO.105 OF 1998 ON THE FILE OF THE COURT OF MUNSIFF MAGISTRATE, PATTAMBI.

EXT.P2 : TRUE COPY OF THE WRITTEN STATEMENT DATED 03.08.1998 IN OS NO.105 OF 1998 ON THE FILE OF THE OCURT OF MUNSIFF MAGISTRATE, PATTAMBI.

EXT.P3 : TRUE COPY OF THE WRITTEN STATEMENT DATED 03.10.98 BY THE 2ND RESPONDENT/DEFENDANT IN OS NO.105 OF 1998, MUNSIFF-MAGISTRATECOURT, PATTAMBI.

EXT.P4 : TRUE COPY OF THE PLAINT DATED 22.10.01 IN OS NO.199 OF 2001, MUNSIFF-MAGISTRATE COURT, PARRAMBI.

EXT.P5 : TRUE COPY OF WRITTEN STATEMENT DATED NIL FILED BY DEFENDANTS 1 TO 3 IN OS NO.199 OF 2001, MUNSIFF-MAGISTRATE COURT, PATTAMBI.

EXT.P6 : TRUE COPY OF THE WRITTEN STATEMENT DATED 04.01.03 FILED BY THE 4TH RESPONDENT IN OS NO.199 OF 2001, MUNSIFF-MAGISTRATE COURT, PATTAMBI.

EXT.P7 : TRUE OCPY OF WRITTEN STATEMENT DATED 06.02.2003 FILED BY DEFNEDANTS 5 AND 6 IN OS NO.199 OF 2001, MUNSIFF-MAGISTRATE COURT, PATTAMBI.

EXT.P8 : TRUE COPY OF IA 789 OF 2004 IN OS NO.105 OF 1998, MUNSIFF-MAGISTRATE COURT, PATTAMBI SEEKING JOINT TRIAL OF OS NO.105 OF 1998 WITH OS NO.199 OF 2001.

EXT.P9 : TRUE COPY OF OBJECTION DATED 14.09.04 FILED BY 2ND RESPONDENT TO IA NO.789 OF 2004 IN OS NO.105 OF 1998, MUNSIFF-MAGISTRATE COURT, PATTAMBI.

EXT.P10 : TRUE COPY OF OBJECTION DATED 14.09.04 FILED BY 3RD RESPONDENT TO IA NO.789 OF 2004 IN OS NO.105 OF 1998, MUNSIFF-MAGISTRATE COURT, PATTAMBI.

EXT.P11 : TRUE COPY OF THE ORDER DT.29.09.04 IN THE IA NO.789 OF 2004 IN OS NO.105 OF 1998, MUNSIFF-MAGISTRATE COURT, PATTAMBI.

/TRUE COPY/

PA TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 7015 OF 2005

Dated this the 6th day of August, 2007

JUDGMENT

Ext.P11 order by which the learned Munsiff dismissed an application for joint trial of Suit OS No.105/98 along with OS No.199/01, a suit filed subsequently on a different cause of action is under challenge. Heard both sides.

I do not think that there is warrant for interfering with Ext.P11 under the visitorial jurisdiction of this Court. Though the property involved in the present suit is a part of the properties involved in the latter suit OS No.199 of 2001, the causes of action are different and there are more plaintiffs than the latter suit, OS No.199 of 2001. I sustain the impugned order and dismiss the Writ Petition. However, I direct the learned Munsiff to try OS No.199 of 2001 as soon as the present suit is tried and disposed of. I also direct the learned Munsiff to permit the petitioners to invoke the provisions of Order XIII Rule 10 during the trial of OS No.199 of 2001, so that the petitioners will be able to take advantage of any material which comes on record in OS No.108 of 1995 in their favour in the latter suit. The above directions in my opinion will suffice for ensuring that conflicting decisions are not given in the two suits by the learned Munsiff.

PIUS C. KURIAKOSE, JUDGE

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